United Nations S/2003/152

Security Council

Distr.: General
6 February 2003

Original: English

Letter dated 5 February 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1132 (1997) concerning Sierra Leone addressed to the President of the Security Council

On behalf of the Security Council Committee established pursuant to resolution 1132 (1997) concerning Sierra Leone, I have the honour to transmit herewith a letter dated 9 December 2002 from the Permanent Representative of the Gambia to the United Nations (see annex).

I would appreciate it if the attached letter, together with its enclosure, could be brought to the attention of the members of the Security Council and issued as a document of the Security Council.

(*Signed*) Adolfo **Aguilar Zinser**
Chairman
Security Council Committee established pursuant to
resolution 1132 (1997) concerning Sierra Leone

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Annex

Letter dated 9 December 2002 from the Permanent Representative of the Gambia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1132 (1997) concerning Sierra Leone

I wish to refer you to our earlier communication dated 8 April 2002 on this subject. We had earlier informed you of the arrest and eventual prosecution of Pieter Judo Maarten Dervoden of Belgium and Sorry Ebrima Touray of Sierra Leone for illegally dealing in diamonds from Sierra Leone.

Let me inform you that criminal case No. 57/2002 brought against the above-named persons was concluded with the delivery of the judgment of Bundung Magistrates' Court on 25 May 2002, a copy of which is annexed hereto (see enclosure). For your information, both accused persons pleaded guilty to both charges brought against them. They had the assistance of counsel throughout the trial.

Count 1 was: importation of rough or uncut diamonds into the Gambia without licence contrary to section 172 (A) of the Customs Act, Cap. A 86.01, Vol. III, of the Laws of the Gambia. Count 2 was: conspiracy to commit a misdemeanour contrary to section 369 of the Criminal Code, Cap. 10, Vol. III, of the Laws of the Gambia and punishable under section 34 of the Criminal Code.

The accused persons were duly convicted on counts 1 and 2 accordingly. Fines and custodial sentences were imposed on them and the diamonds were forfeited to the State in accordance with section 66 of the Minerals Act, Cap. 64.00, of the Laws of the Gambia.

Let me reiterate the Gambia's commitment to the fight against the illegal use of diamonds to fuel conflicts in the world. We are always willing to cooperate with the Committee in the fulfilment of its mandate.

Kindly circulate the present letter as a document of the Security Council.

(*Signed*) Crispin **Grey-Johnson**
Ambassador and Permanent Representative

Enclosure

IN THE BUNDUNG MAGISTRATE COURT

CRIMINAL CASE NO. 57/2002

INSPECTOR GENERAL OF POLICE

VS.

PIETER JUDO MAARTEN DERVODEN

SORRY EBRIMA TOURAY

Wednesday 22nd May 2002
Before Her Worship Mrs. K. S. Janneh
1st accused Present
2nd accused Present

A. S. P. Dibba for IGP Present
O. Jawara for 1st and 2nd accused

Counsel for the accused informs the Court that the 2nd accused wishes to change his plea to guilty.

Any objection? No.

I shall re-read the charge to the accused person. Charge re-read to the accused in English and interpreted into French for the 1st accused, which he seems to understand.

Count 1

1st accused pleads "guilty"
2nd accused pleads "guilty"

Count 2

1st accused pleads "guilty"
2nd accused pleads "guilty"

JUDGMENT

FACTS

On 22 February 2002, the N. I. A. had a tip-off that 1st accused was in possession of diamonds at the Badala Park Hotel. A team was led by Officer Lamin Darboe. They went to the General Manager of the Hotel, introduced themselves as intelligence officers and explained their mission. They informed the General Manager that they wanted to search the room of the 1st accused, room No. B.9.

The General Manager accepted this and gave them an escort, the Assistant Security Supervisor Buba Saidykhan. They went with him to room B.9, found the 1st accused and introduced themselves as intelligence officers. He welcomed them and the intelligence officers started searching. During the course of the search, they asked the accused to open an L-safe in his room. In the L-safe they recovered about US$

6,800 in US$ 100 notes and 311 pieces of diamonds. These are already in the custody of the court. I would like to tender them as Exhibit.

Q. Any objection?
A. No.

Diamond admitted and marked Exh. A, A3 and dollars, Exh. B, B6. A passport belonging to the accused and a weighing scale were also found which are with the court. I am applying to tender them.

Passport admitted and marked Exh. C, weighing scale, Exh. D. The accused was asked how he came into possession of the diamonds. He said he got them from two people at the Fajara Hotel. He told the officer that the 2nd accused took him to these people. He was arrested, taken to the Intelligence Office with the 2nd accused where they were cautioned and charged with the offences for which they now stand before this court for trial.

Are the facts true and correct?

1st accused: Yes.
2nd accused: Yes.

I shall adjourn this matter for VERDICT.

Matter adjourned to 29/5/2002.

Accused bail continues.

1st accused: Present.
2nd accused: Present.

A. S. P. Dibba with Cadet M. Sanneh for IGP.
O. Jawara for 1st and 2nd accused, Present.

Are the facts true and correct?

1st accused: Yes.
2nd accused: Yes.

VERDICT

The two accused persons are jointly charged with 2 counts. Count 1: importation of rough and uncut diamonds without a licence contrary to S. 172(a) of the Customs Act, Cap. 86:01, Vol. VIII, Laws of the Gambia.

Count 2: conspiracy to commit a misdemeanour contrary to S. 369 of the Criminal Code, Cap. 10, Vol. III, Laws of the Gambia. Both accused plead guilty to both counts.

From the facts as narrated by the prosecution, the National Intelligence officers had information that the 1st accused was in possession of some diamonds and was staying at the Badala Park Hotel.

The intelligence officers acted on the information and went to the hotel. At Badala Park, they were assigned a hotel security guard to accompany them to the 1st accused room by the General Manager of the hotel. The 1st accused was staying at room No. B.9. On getting to the 1st accused room, No. B.9, the officers, led by Lamin Darboe, an intelligence officer, introduced themselves to the 1st accused

person and explained their mission. They were welcomed and allowed to enter the room and conduct a search.

In the course of the search, 311 diamond pieces were found in the safe that the 1st accused opened for them, together with $6,800 in $100 notes. Diamonds were tendered, admitted and marked Exh. A-A3. The 68 $100 notes were tendered, admitted and marked Exh. B1-B68.

A weighing scale found in the safe with a passport belonging to the 1st accused were also tendered. The 1st accused passport was admitted and marked Exh. C, the weighing scale admitted and marked Exh. D. On enquiring as to how he got the diamonds, the 1st accused explained that the 2nd accused introduced him to two people at the Fajara Hotel from whom he got the diamonds. He was arrested and taken to the N. I. A. headquarters as well as the 2nd accused, and now they stand for trial.

The two accused confirmed the facts as being true and correct.

From the facts as outlined, the accused are charged with importation of the said diamonds found in the possession of the 1st accused without a licence contrary to S. 172(a) of the Customs Act Cap. 86:02, Vol. III, Laws of the Gambia and conspiracy to commit a misdemeanour. S. 172(a) of the Customs Act states "every person who shall (a) import or bring or be concerned in importing or bringing into The Gambia any prohibited goods or any goods the importation of which is restricted contrary to such prohibition or restriction whether the same be unloaded or not" shall be guilty of an offence. For this offence to be committed, the goods must be prohibited and there must be an importation by the accused or caused by the accused.

The accused must have acted contrary to restriction. In this case, the 1st accused is found in possession of rough and uncut diamonds, which are prohibited goods if the one in possession did not have a licence to deal in them.

However, the most important ingredient of the section is "an importation into the Gambia of such prohibited goods. The facts disclosed did not prove that the 1st or even the 2nd accused imported or caused these prohibited goods to be imported into the country.

The accused were not arrested at a port of entry, be it the airport or sea port. The search of the 1st accused did not reveal any importation document or receipt, cargo bill of lading, etc. The intelligence officer merely found him in possession of these prohibited goods and he did not have a licence.

On enquiry, he told them that they were bought from people introduced by the 2nd accused. Nowhere in the facts did the accused say he caused these prohibited goods to be imported into the country or imported them himself or the 2nd accused. Based on the above, the charge against the 2nd accused contrary to S. 172(a) of the Customs Act, Cap. 86:01 cannot hold. However, pursuant to S. 151 of the C. P. C. where the offence disclosed by the facts did not constitute the offence charged, the accused person may be convicted of the other offence. S. 151 of the C. P. C. Cap. 12:01, Vol. III, Laws of the Gambia, states that "every charge shall be deemed to be divisible into the integral parts legally necessary to commit the offence charged as described in the enacted creating the offence and if the evidence shows that some integral part of the offence charged only are proved and such parts which are proved or some of

them taken together constitute another offence the person charged may be convicted of the other offence or of an attempt to commit it".

In addition to this, as held in Woolmington V D. P. P., the prosecution has the burden to prove the guilt of an act beyond all reasonable doubt in a criminal trial.

In this case, the facts disclosed did not constitute all the integral parts of the offence charged. As the accused was found in possession of prohibited goods, not to have imported them, without a licence, S. 65 of the Minerals Act, Cap. 64, Vol. VII, Laws of the Gambia, states that "any person who being in possession of any mineral does not prove to the satisfaction of the court that he obtained such material lawfully shall independently of any other liability be guilty of an offence".

The 1st accused is found in possession of 311 pieces of diamonds. He did not show the officers any licence granted by the State showing him to be lawfully dealing in these minerals in the Gambia.

Also he did not show any evidence to the contrary that he was lawfully dealing in these minerals. He did not show any receipt for purchase or any certificate or any authority whatsoever, nor was any authority vested in him to deal in these minerals.

The other items found with him are not illegal. They are $6,800.00, his passport and a weighing scale.

The facts further disclose that the 2nd accused is not staying with the 1st accused in room B.9, he was not present when the 1st accused room was searched and none of the 311 pieces of diamonds were found with him. He only came to be known when the 1st accused mentioned that he had introduced him to the sellers of the diamonds. Then he was arrested.

From all the above, I find neither of the accused guilty of importation of rough or uncut diamonds into the Gambia without a licence contrary to Section 172(a) of the Customs Act, Cap 86:01, but I find the 1st accused guilty with respect to S. 65 the Mineral Act, Cap 64:01, Vol. VII, Laws of the Gambia, for being in possession of a mineral without a licence.

I find both accused guilty of count III of conspiracy to commit a felony contrary to S. 367 of the C. P. C., Cap. 10, Vol. III, Laws of the Gambia.

I shall convict both accused accordingly.

Allocution by counsel for the accused.

Your Worship, the 1st accused is a 68-year-old pensioner who works part-time for a reputable company in Antwerp. Your Worship, ignorance is not a defence, but the 1st accused has gone through a great ordeal from the moment this thing started.

In my opinion, this has served as a great retribution, thus I doubt if he would endeavour in such acts as he was convicted of today.

Your Worship, he is a first offender, a family man and most of all, in need of urgent medical attention. I beg Your Worship to exercise leniency and discretion in sentencing the 1st accused. Your Worship, the 2nd accused is also a first offender. He has been living in the Gambia for almost five years and in full-time employment. Your Worship, he has also gone through a great ordeal which, in my opinion, will serve as a warning so that such an offence will not be committed in the future.

Both accused have accepted the offence they have been convicted of and wish to face the consequences and put it behind them. I urge Your Worship to exercise leniency and discretion in sentencing both convicts.

Prosecutor: Your Worship, I want to make an application; I am applying for the deportation of the 1st accused from this country.

Counsel: Your Worship, I am objecting to that application as the offence he has been convicted of does not warrant such an action. He has committed an offence and has preferred to face the consequence. He did intend to go back to his family as a two-week holiday has turn out to be a four-month ordeal.

I believe that he is already facing embarrassment for the offence of which he has been convicted. I urge Your Worship to allow the old man to leave in peace and dignity. In any event, he has not found security in any way thereby in possession of illegal items.

Your Worship, the 1st accused loves Gambia and intends to continue visiting the Gambia as a tourist. Your Worship, I submit that such an application is too harsh. Enough is enough.

Court — Question — previous records?

Answer — No, according to police records, they are 1st offenders.

SENTENCES

COUNT 1

Section 65 (a) of the Minerals Act, Cap. 64.00, states the penalty for violation of section 65, i.e. unlawful possession of minerals. It states that on summary conviction, a fine not exceeding D2,000 (two thousand dalasis) may be imposed or imprisonment with or without hard labour for a period not exceeding 12 months or both such fine and imprisonment. In addition to this penalty, section 66 of the same Act (Mineral Act) states that "on conviction of any person, whether summarily or on information for an offence against section 65 of this Act any Mineral in respect of such offence has been committed shall unless prove by some other person to be the property of that other person be forfeited to the State and shall be sold or otherwise disposed of as the Minister may by order direct the proceeds from the sale shall be paid into general revenue".

I shall therefore sentence the 1st accused to 12 months or a D2,000 fine. The 711 pieces of diamonds shall be forfeited to the State.

COUNT 2

I shall sentence the accused to six months' imprisonment or a D2,000 (two thousand dalasis) fine.

The sentence of the 1st accused shall be concurrent and the fine cumulative. I further order that the sum of $6,800.00 found in the possession of the 1st accused, his passport and weighing scale be returned to the 1st accused, who shall sign for them.

I shall allow the 1st accused to continue staying in the Gambia and may depart peacefully when he so wishes after serving his sentence as he is not a threat or menace to society.

Signed MAGISTRATE
NGUIE MBOOB ESQ.
29/5/02